

STATE OF WISCONSIN

:

CIRCUIT COURT  
BRANCH \_\_\_\_\_

:

WAUKESHA COUNTY

11CV03995

DENNIS CLINARD  
5852 Cedar Road  
Sparta, WI 54656,

ERIN M. DECKER  
706 N. School Street  
Silver Lake, WI 53170,

LUONNE A. DUMAK  
3601 South 147<sup>th</sup> Street, Apt. 134  
New Berlin, WI 53151,

DAVID A. FOSS  
1894 22<sup>5/8</sup> Street  
Rice Lake, WI 54868,

LaVONNE J. DERKSEN  
2338 Talc Trail, Apt. 209  
Madison, WI 53719,

PAMELA S. TRAVIS  
N2607 Cardinal Avenue  
Neillsville, WI 54456,

JOHN E. HAGER  
127 West Hidden Trail, Unit 101  
Elkhorn, WI 53121,

JAMES L. WEINER  
W5665 Young Road  
Palmyra, WI 53156,

JEFF L. WAKSMAN  
334 North Allen Street, Unit 5  
Madison, WI 53726, and

KEVIN CRONIN  
1832 Grange Avenue  
Racine, WI 54303,

Plaintiffs,

**HASSIN**

Case No. \_\_\_\_\_

Case Code: 30701

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NOV 28 2011

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and

ALVIN BALDUS  
5446 E. 770th Avenue  
Menomonie, WI 54751;

CINDY BARBERA  
1210 Tramore Trail  
Madison, WI 53717;

CARLENE BECHEN  
381 Union Road  
Brooklyn, WI 53521;

ELVIRA BUMPUS  
3105 Kearney Avenue  
Racine, WI 53403

RONALD BIENDSEIL  
6831 Erdman Blvd.  
Middleton, WI 53562;

LESLIE W. DAVIS III  
1021 Riverview Drive  
Stoughton, WI 53589;

BRETT ECKSTEIN  
595 North Barker Road  
Brookfield, WI 53045;

GLORIA ROGERS  
35 Sinykin Circle  
Madison, WI 53714;

RICHARD KREBSBACH  
408 W. Brandybrook Road  
Wales, WI 53183;

ROCHELLE MOORE  
3623 15th Street, Apt. 2B  
Kenosha, WI 53144-4714;

AMY RISSEEUW  
200 East College Avenue  
Appleton, WI 54911;

JUDY ROBSON  
2411 E. Ridge Road  
Beloit, WI 53511;

JEANNE SANCHEZ-BELL  
7311 10th Avenue  
Kenosha, WI 53143;

CECELIA SCHLIEPP  
6340 County Line Road  
Hartland, WI 53029;

TRAVIS THYSEN  
2235 Fraser Fir Lane  
Appleton, WI 54913

Involuntary Plaintiffs,

v.

MICHAEL BRENNAN  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703,

DAVID DEININGER  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703,

GERALD NICHOL  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703,

THOMAS CANE  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703,

THOMAS BARLAND  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703, and

TIMOTHY VOCKE each in his official capacity as a member  
of the WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703; and

KEVIN KENNEDY, Director and General  
Counsel for the WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703,

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Defendants.

NOV 28 2011

**SUMMONS**

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THE STATE OF WISCONSIN

To each person named above as an Involuntary Plaintiff or Defendant:

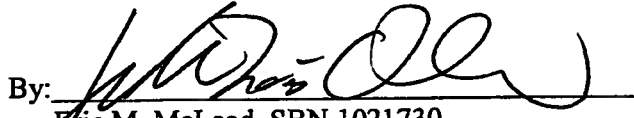
You are hereby notified that the above-named Plaintiffs have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Waukesha County Clerk of Court, Waukesha County Courthouse, 515 West Moreland Boulevard, Waukesha, WI 53188, and to Eric M. McLeod of Michael Best & Friedrich LLP, plaintiffs' attorneys, whose address is One South Pinckney Street, Suite 700, Post Office Box 1806, Madison, Wisconsin 53701-1806. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law.

Dated this 2<sup>nd</sup> day of November, 2011.

**MICHAEL BEST & FRIEDRICH LLP**  
Attorneys for Plaintiffs

By:   
Eric M. McLeod, SBN 1021730  
Joseph Louis Olson, SBN 1046162  
Michael P. Screnock, SBN 1055271  
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**MICHAEL BEST & FRIEDRICH LLP**  
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TIMOTHY VOCKE each in his official capacity as a member  
of the WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD  
212 E. Washington Avenue, Third Floor  
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KEVIN KENNEDY, Director and General  
Counsel for the WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD  
212 E. Washington Avenue, Third Floor  
Madison, WI 53703,

Defendants.

CLERK OF COURTS

**COMPLAINT FOR DECLARATORY AND OTHER RELIEF AND APPOINTMENT  
OF THREE JUDGE PANEL PURSUANT TO WIS. STAT. §§ 751.035 and 801.50(4m)**

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**INTRODUCTION**

This matter concerns the reapportionment of legislative and congressional districts in the State of Wisconsin. The Plaintiffs seek a declaration concerning the validity of certain legislation which, following the 2010 federal census, has established new legislative and congressional district boundaries (the "2011 Redistricting Plan"). The Plaintiffs also seek a declaration that the 2002 court-adopted redistricting plan (the "2002 Court Plan") is unconstitutional and that the Senate and Assembly districts established by the 2002 Court Plan may not lawfully be used to conduct any elections, including special or recall elections.

The 2011 Redistricting Plan, as set forth in 2011 Wisconsin Acts 43 and 44, was adopted by the State Legislature in order to account for shifts in population that have occurred since the previous 2000 census. Those shifts in population rendered the prior Senate and Assembly districts, which were established by the 2002 Court Plan, unconstitutionally malapportioned. Thus, the State Legislature acted pursuant to its duty, as set forth in Article IV, Section 3 of the Wisconsin Constitution, to "apportion and district anew" those unconstitutional districts.

The above-named Involuntary Plaintiffs have challenged the validity of the 2011 Redistricting Plan on constitutional and other grounds by the filing of an action in the Federal District Court for the Eastern District of Wisconsin, Case No. 11-cv-562. The Involuntary

Plaintiffs have pursued their action in federal court despite the United States Supreme Court's clear admonition that congressional and legislative reapportionment "is primarily the duty and responsibility of the State ... rather than of a federal court." *Grove v. Emison*, 507 U.S. 25, 34 (1993). In light of the challenge to the 2011 Redistricting Plan that has been initiated by the Involuntary Plaintiffs, the Plaintiffs seek a resolution to the issues raised by that challenge in the proper state forum. Specifically, Plaintiffs seek a declaration that the 2011 Redistricting Plan is legally valid under applicable constitutional and other redistricting principles.

Following the enactment of the 2011 Redistricting Plan, the Government Accountability Board ("GAB"), which is the state agency responsible for administering the laws concerning the conduct of elections in the State of Wisconsin, issued formal guidance that any recall elections which may be initiated and held prior to the general election in November of 2012, are to be conducted in the old legislative districts established by the 2002 Court Plan. GAB issued this formal guidance despite the fact there is no dispute that the prior legislative districts are unconstitutionally malapportioned. Indeed, the Involuntary Plaintiffs have expressly alleged in the federal lawsuit that the prior legislative districts are unconstitutional.

GAB issued this formal guidance despite also concluding that the legislative districts established by the 2011 Redistricting Plan are effective for purposes of constituent representation. Thus, in the event that any recall elections are conducted between now and November of 2012, many electors who are now represented by a particular State Senator in a new district established by the 2011 Redistricting Plan *will not* be able to vote in a recall election concerning that Senator. Conversely, many electors who are no longer represented by that Senator, because they reside in the Senator's old district but not within the new district, *will* be entitled to vote in a recall election concerning that Senator. This amounts to a clear violation of

the constitutional provision concerning the recall of elective officers set forth in Article XIII, Section 12 of the Wisconsin Constitution. Thus, Plaintiffs seek a declaration from this Court that recall elections may not be conducted in unconstitutionally malapportioned districts and that such elections may only be conducted in the districts established by the 2011 Redistricting Plan, which incumbent legislators now represent.

Finally, in 2011 Wisconsin Act 39, the State Legislature enacted Wis. Stat. §§ 751.035 and 801.50(4m), which provide for the appointment of a panel of three circuit court judges by the Supreme Court in actions involving a challenge to the apportionment of any congressional or legislative district. Plaintiffs recently filed a Petition in the Wisconsin Supreme Court asking for the appointment of a three-judge panel pursuant to the provisions of Wis. Stat. §§ 751.035 and 801.50(4m). In the alternative, Plaintiffs have requested that the Supreme Court accept this case as an original action pursuant to Article VII, Section 3 of the Wisconsin Constitution. However, in light of the procedures governing a Petition filed directly with the Supreme Court, Plaintiffs have also filed this action in order to ensure that the relevant procedures enacted by 2011 Wisconsin Act 39 are given effect in an as expeditious manner as possible. Wis. Stat. § 801.50 (4m) provides that “[n]ot more than 5 days after an action to challenge the apportionment of a congressional or state legislative district is filed, the clerk of courts for the county where the action is filed shall notify the clerk of the supreme court of the filing.” Wis. Stat. § 751.035(1) provides that “[u]pon receiving notice under s. 801.50 (4m), the supreme court shall appoint a panel consisting of 3 circuit court judges to hear the matter.”

In this action, Plaintiffs challenge the apportionment of all legislative districts adopted by the 2002 Court Plan on grounds that population shifts revealed by the 2010 federal census have rendered those districts unconstitutionally malapportioned. Such malapportioned districts may

not be used to conduct any elections. Similarly, Involuntary Plaintiffs have challenged the validity of the 2011 Redistricting Plan. The three-judge panel procedure prescribed by the relevant provisions of 2011 Wisconsin Act 39 are therefore implicated and, within 5 days of the filing of this Complaint, the clerk of this Court must notify the clerk of the Supreme Court of same.

### **PARTIES**

#### **Plaintiffs**

1. Plaintiff Dennis Clinard is a resident of the State of Wisconsin residing at 5852 Cedar Road in the Town of Sparta, County of Monroe, 54656. Clinard is a qualified elector who resides in the 70<sup>th</sup> Assembly District pursuant to the 2011 Redistricting Plan. Clinard's residence was previously within the 92<sup>nd</sup> Assembly District pursuant to the 2002 Court Plan. In 2010, Clinard ran for the office of State Assembly in the old 92<sup>nd</sup> Assembly District and may again run for the legislature.

2. Plaintiff Erin M. Decker is a resident of the State of Wisconsin residing at 706 N. School Street in the Village of Silver Lake, County of Kenosha, 53170. Decker is a qualified elector whose residence was formerly in the 66<sup>th</sup> Assembly district, represented by Representative Kerkman, and the 22<sup>nd</sup> Senate district, represented by Senator Wirch. Pursuant to the 2011 Redistricting Plan, Decker's residence is now in the 61<sup>st</sup> Assembly district, represented by Representative Kerkman, and the 21<sup>st</sup> Senate district, represented by Senator Wanggaard.

3. Plaintiff Luonne A. Dumak is a resident of the State of Wisconsin residing at 3601 South 147<sup>th</sup> Street, Apt. 134 in the City of New Berlin, County of Waukesha, 53151. Dumak is a qualified elector whose residence was formerly in the 84<sup>th</sup> Assembly district, represented by Representative Kuglitsch, and the 28<sup>th</sup> Senate district, represented by Senator

Lazich. Pursuant to the 2011 Redistricting Plan, Dumak's residence is now in the 15<sup>th</sup> Assembly district, represented by Representative Staskunas, and the 5<sup>th</sup> Senate district, represented by Senator Vukmir.

4. Plaintiff David A. Foss is a resident and qualified elector of the State of Wisconsin residing at 1894 22<sup>5/8</sup> Street in the Town of Rice Lake, County of Barron, 54868.

5. Plaintiff LaVonne J. Derksen is a resident of the State of Wisconsin residing at 2338 Talc Trail, Apt. 209 in the City of Madison, County of Dane, 53719. Derksen is a qualified elector whose residence was formerly located in the 79<sup>th</sup> Assembly district represented by Representative Pope-Roberts. Pursuant to the 2011 Redistricting Plan, Derksen's residence is now in the 78<sup>th</sup> Assembly district, represented by Representative Pocan.

6. Plaintiff Pamela S. Travis is a resident and qualified elector of the State of Wisconsin residing at N2607 Cardinal Avenue in the Town of Grant, County of Clark, 54456.

7. Plaintiff John E. Hager is a resident of the State of Wisconsin residing at 127 West Hidden Trail, Unit 101 in the City of Elkhorn, County of Walworth, 53121. Hager is a qualified elector who resides in the 31<sup>st</sup> Assembly District, which was formerly represented by Representative Nass but is currently represented by Representative Loudenberg pursuant to the 2011 Redistricting Plan.

8. Plaintiff James L. Weiner is a resident of the State of Wisconsin residing at W5665 Young Road in the Town of LaGrange, County of Walworth, 53156. Weiner is a qualified elector whose residence was formerly in the 31<sup>st</sup> Assembly district, represented by Representative Nass. Pursuant to the 2011 Redistricting Plan, Weiner's residence is now in the 33<sup>rd</sup> Assembly district, which is still represented by Representative Nass.

9. Plaintiff Jeff L. Waksman is a resident of the State of Wisconsin residing at 334 North Allen Street, Unit 5 in the City of Madison, County of Dane, 53726.

10. Plaintiff Kevin Cronin is a resident of the State of Wisconsin residing at 1832 Grange Avenue in the City of Racine, County of Racine, 54301. Cronin is a qualified elector whose residence was formerly in the 62<sup>nd</sup> Assembly district, represented by Representative Mason, and the 21<sup>st</sup> Senate district, represented by Senator Wanggaard. Pursuant to the 2011 Redistricting Plan, Cronin currently resides in the 66<sup>th</sup> Assembly district, represented by Representative Turner, and the 22<sup>nd</sup> Senate district, represented by Senator Wirch.

#### **Defendants**

11. Defendant Michael Brennan, resident of the City of Marshfield, Wisconsin; David Deininger, resident of the Town of Monroe, Wisconsin; Gerald Nichol, resident of the City of Madison, Wisconsin; Thomas Cane, resident of the City of Wausau, Wisconsin; Thomas Barland, resident of the City of Eau Claire, Wisconsin; and Timothy Vocke, resident of the Town of Rhinelander, Wisconsin are all members of the Wisconsin Government Accountability Board and are named in such official capacity. The Wisconsin Government Accountability Board is an independent agency of the State of Wisconsin with authority for the administration of laws concerning the conduct of elections.

12. Defendant Kevin Kennedy is a Wisconsin resident residing in Dane County, Wisconsin and is the Director and General Counsel for the Wisconsin Government Accountability Board.

#### **Involuntary Plaintiffs**

13. The following Involuntary Plaintiffs have challenged the validity of the 2011 Redistricting Plan on constitutional and other legal grounds by the filing of an action in the

Federal District Court for the Eastern District of Wisconsin, Case No. 11-cv-562. These Involuntary Plaintiffs are represented in the Federal Action by Brady Williamson and Rebecca Kathryn Mason of Godfrey & Kahn, S.C. whose address is One East Main Street, Suite 500, Madison, WI 53701-2719.

a. Alvin Baldus is upon information and belief a Wisconsin resident and registered voter residing in the City of Menomonie, Dunn County, Wisconsin.

b. Cindy Barbera is upon information and belief a Wisconsin resident and registered voter residing in the City of Madison, Dane County, Wisconsin.

c. Carlene Bechen is upon information and belief a Wisconsin resident and registered voter residing in the Village of Brooklyn, Dane County, Wisconsin.

d. Elvira Bumpus is upon information and belief a Wisconsin resident and registered voter residing in the City of Racine, Racine County, Wisconsin.

e. Ronald Biendseil is upon information and belief a Wisconsin resident and registered voter residing in the City of Middleton, Dane County, Wisconsin.

f. Leslie W. Davis III is upon information and belief a Wisconsin resident and registered voter residing in the City of Stoughton, Dane County, Wisconsin.

g. Bret Eckstein is upon information and belief a Wisconsin resident and registered voter residing in the Village of Sussex, Waukesha County, Wisconsin.

h. Gloria Rogers is upon information and belief a Wisconsin resident and registered voter residing in the City of Racine, Racine County, Wisconsin.

i. Richard Krebsbach is upon information and belief a Wisconsin resident and registered voter residing in the Village of Wales, Waukesha County, Wisconsin.

j. Rochelle Moore is upon information and belief a Wisconsin resident and registered voter residing in the City of Kenosha, Kenosha County, Wisconsin.

k. Amy Risseuw is upon information and belief a Wisconsin resident and registered voter residing in the Town of Menasha, Outagamie County, Wisconsin.

l. Judy Robson is upon information and belief a Wisconsin resident and registered voter residing in the City of Beloit, Rock County, Wisconsin.

m. Jeanne Sanchez-Bell is upon information and belief a Wisconsin resident and registered voter residing in the City of Kenosha, Kenosha County, Wisconsin.

n. Cecelia Schliepp is upon information and belief a Wisconsin resident and registered voter residing in the Town of Erin, Washington County, Wisconsin.

o. Travis Thyssen is upon information and belief a Wisconsin resident and registered voter residing in the Town of Grand Chute, Outagamie County, Wisconsin.

#### **JURISDICTION AND VENUE**

14. Venue in this Court is proper pursuant to Wis. Stat. § 801.50(3)(a), which provides that “all actions in which the sole defendant is the state, any state board or commission, or any state officer, employee, or agency in an official capacity shall be venued in the county designated by the plaintiff unless another venue is specifically authorized by law.”

15. The United States Supreme Court has often held that congressional and legislative reapportionment “is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.” *Grove v. Emison*, 507 U.S. 25, 34 (1993) (quotation omitted).

16. The United States Supreme Court has also recognized that state courts are the primary judicial authority on redistricting matters and has stated that it “prefers *both* state



branches [legislative and judicial] to federal courts as agents of apportionment.” *Grove v. Emison*, 507 U.S. 25, 34 (1993) (emphasis in original).

17. The Wisconsin Legislature has enacted Wis. Stat. §§ 751.035 and 801.50(4m) providing for the appointment of a three-judge panel by the Supreme Court to hear challenges and disputes regarding legislative or congressional redistricting matters.

18. Wisconsin’s Uniform Declaratory Judgments Act, Wis. Stat. § 806.04, states that “[c]ourts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Wis. Stat. § 806.04(1). The Act further allows a party “whose rights, status or other legal relations are affected by a statute” to petition a court and “have determined any question of construction or validity arising under” the statute. Wis. Stat. § 806.04(2).

19. Citizens of the State of Wisconsin, including Plaintiff Clinard, who may seek to run for a congressional or legislative office, will not know in which district they will be entitled to run until the dispute regarding the validity of the 2011 Redistricting Plan is resolved.

20. Wisconsin voters, including the Plaintiffs, are also severely disadvantaged by the uncertainty resulting from the challenge to the validity of the 2011 Redistricting Plan in many ways, including:

- i. Voters who desire to affect the views of candidates may not effectively communicate those concerns as candidates cannot declare for office without knowing the districts in which they will run;
- ii. Fewer potential candidates will come forward if they do not know the borders of the districts in which they will run;

- iii. Voters' rights will be compromised because of candidates' lack of ability to run effective campaigns and provide a meaningful election.

### **FACTUAL BACKGROUND**

21. Pursuant to Article IV, Section 3 of the Wisconsin Constitution, the Wisconsin State Legislature is responsible for enacting a constitutionally-valid plan for legislative districts.

22. Article IV, Section 3 of the Wisconsin Constitution requires that the legislature "apportion and district anew" the state assembly and senate districts following each federal census.

23. Article 1, Section 2 of the United States Constitution provides that "Representatives . . . shall be apportioned among the several states . . . according to their respective numbers...." It further provides that "[t]he House of Representatives shall be composed of members chosen every second year by the people of the several states...."

24. The Bureau of Census, U.S. Department of Commerce, conducted a decennial census in 2010 pursuant to Article 1, Section 2 of the United States Constitution. Census data from the 2010 Census was released to the State of Wisconsin in March of 2011.

25. Pursuant to Article IV, Section 3 of the Wisconsin Constitution and Article 1, Section 2 of the United States Constitution, the Wisconsin State Legislature drafted and adopted legislation, 2011 Wisconsin Acts 43 and 44, referred to herein as the 2011 Redistricting Plan, establishing new legislative and congressional districts based upon population data gathered through the 2010 Census.

26. The Wisconsin State Senate adopted the 2011 Redistricting Plan on July 19, 2011. The Wisconsin State Assembly adopted the 2011 Redistricting Plan on July 20, 2011.

27. Governor Walker signed the 2011 Redistricting Plan into law on August 9, 2011.

28. A dispute has arisen concerning the legal validity of the legislative and congressional districts established by the 2011 Redistricting Plan. Specifically, the above-named Involuntary Plaintiffs have filed an action in the Federal District Court for the Eastern District of Wisconsin, Case No. 11-cv-562, in which they seek declaratory relief striking down the 2011 Redistricting Plan and a corresponding injunction. A copy of the Involuntary Plaintiffs' Complaint and Amended Complaint are attached to this Complaint as Exhibit A and Exhibit B, respectively.

29. A dispute has also arisen regarding the initial applicability of the legislative districts created by the 2011 Redistricting Plan.

30. The GAB has issued formal guidance regarding the initial applicability of the legislative districts created by Act 43. A copy of the GAB's formal guidance memorandum is attached to this Complaint as Exhibit C.

31. According to the GAB's formal guidance memorandum, "[t]he effective date of 2011 Wisconsin Act 43 with respect to representation differs from its effective date for election purposes." (Exhibit C at 3)

32. GAB has concluded in its formal guidance memorandum that the legislative districts established by the 2011 Redistricting Plan are "effective as of August 24, 2011 for representation purposes." (*Id.*)

33. However, GAB has also concluded that "the legislative districts created by 2011 Wisconsin Act 43 are not in effect for the purpose of 'special or recall elections to offices filled or contested' prior to the General Election on November 6, 2012." (*Id.* at 2) GAB's conclusion in this regard is purportedly based on provisions of Act 43 which state that the Act "first applies, with respect to regular elections, to offices filled at the 2012 general elections," 2011 Wis. Act

43 § 10(1), and that the Act “first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election.” 2011 Wis. Act. 43 § 10(2).

34. Thus, GAB has concluded that any special or recall elections to offices filled or contested prior to the November 2012 General Election are to be conducted in the legislative districts established by the 2002 Court Plan. GAB’s conclusion is erroneous because the legislative districts established by the 2002 Court Plan are unconstitutionally malapportioned and, thus, cannot be used to conduct elections consistent with the central constitutional principle of one-person, one-vote.

35. As outlined above, the new legislative districts established by the 2011 Redistricting Plan were established pursuant to Article IV, Section 3 of the Wisconsin Constitution using population data compiled by the federal government in the 2010 Federal Census and disseminated to the State of Wisconsin. The 2010 Federal Census data demonstrate that the populations within the legislative districts established by the 2002 Court Plan deviated substantially from equal population and were therefore unconstitutionally malapportioned.

36. As shown by the 2010 Federal Census data, the population deviation among Senate districts under the 2002 Court Plan ranged from a high of 25,535 (14.82%) above zero deviation or an ideal population of 172,332 and a low of 19,574 (11.36%) below zero deviation. The population deviation among Assembly districts under the 2002 Court Plan ranged from a high of 18,720 (32.59%) above zero deviation or an ideal population of 57,444, and a low of 9,057 (15.77%) below zero deviation.

37. According to GAB’s guidance memorandum, current legislators now represent constituents who reside in the new legislative districts established by the 2011 Redistricting Plan. Yet, despite the fact that current legislators represent persons who reside in the new legislative

districts, GAB's guidance concludes that legislators may be recalled by a different set of constituents, namely those residing within the old districts established by the 2002 Court Plan.

38. GAB's guidance, which provides that any special or recall elections must be conducted in the old districts, while the new districts are effective for purposes of constituent representation, results in the potential disenfranchisement of nearly one million Wisconsin citizens for purpose of recall elections. Among the 24 Senate districts in which recall elections could be held in 2012, there are 923,362 citizens, including Plaintiff Decker, who, according to GAB's guidance, could not vote in a recall election concerning the Senator who now represents them.

39. On November 15, 2011, the Committee to Recall Wanggaard filed a registration statement with GAB and appended to it a statement of intent to circulate a petition to recall Senator Wanggaard executed by the Committee's treasurer, Randolph Brandt. If the Committee to Recall Wanggaard is successful in forcing a recall election in the 21<sup>st</sup> Senate District, Plaintiff Decker could not vote in the election, despite the fact that Senator Wanggaard currently represents her.

40. Article XIII, Section 12(7) of the Wisconsin Constitution specifically provides that "no law shall be enacted to hamper, restrict, or impair the right of recall." Article XIII, Section 12(1) provides that a "recall petition shall be signed by electors ... in the ... district which the incumbent represents." GAB's guidance providing that old legislative districts apply to recall elections is in direct conflict with this constitutional mandate and serves to impair the right of recall of more than 900,000 citizens, including Decker.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

(Declaratory Relief Pursuant To Wis. Stat. § 806.04 That  
The 2011 Redistricting Plan Is Valid And Constitutional)

41. A dispute has arisen regarding the validity and constitutionality of the 2011 Redistricting Plan.

42. Involuntary Plaintiffs have challenged the validity and constitutionality of the 2011 Redistricting Plan in the United States District Court for the Eastern District of Wisconsin, as outlined above.

43. Plaintiffs contend that the 2011 Redistricting Plan is a valid and constitutional enactment of the Wisconsin State Legislature.

44. Based upon the dispute regarding the legal validity of the 2011 Redistricting Plan, Plaintiffs have standing to bring this action for declaratory relief in light of the effect of that dispute on their interests.

45. Plaintiffs are entitled to a declaration, pursuant to Wis. Stat. § 806.04, that the 2011 Redistricting Plan is a valid and enforceable enactment of the Wisconsin Legislature.

### **COUNT TWO**

(Declaratory Relief Pursuant To Wis. Stat. § 806.04 That The Legislative  
Districts Established By The 2002 Court Plan Are Unconstitutional)

46. There is no dispute that based on the 2010 Census data the legislative districts established under the 2002 Court Plan are unconstitutionally malapportioned and violate the central principle of one-person, one-vote.

47. GAB has nevertheless concluded that any special or recall elections held prior to November of 2012 will be conducted in the old legislative districts.

48. GAB has recently received statements of intent to circulate recall petitions in Senate Districts 13, 21, 23 and 29. Upon information and belief, petition circulators are circulating or intend to circulate recall petitions within the old Senate Districts under the 2002 Court Plan, pursuant to the GAB guidance.

49. GAB has legal authority to evaluate and determine the sufficiency of recall petition and, where such petitions are deemed sufficient, to direct that recall elections be held in a given legislative district. If not enjoined, GAB will unlawfully direct that recall elections be conducted in the Senate Districts under the 2002 Court Plan in the event the petitions in those districts are deemed sufficient.

50. Plaintiffs contend that the legislative districts established by the 2002 Court Plan are unconstitutional. Plaintiffs' interests will be impacted if recall elections are conducted in unconstitutional districts and are entitled to a declaration that recall elections may not be conducted in such districts.

#### **REQUEST FOR APPOINTMENT OF THREE-JUDGE PANEL**

51. In recognition of the state's primary role in the redistricting process, the Wisconsin Legislature has established a procedure for the review of disputes regarding redistricting. Pursuant to the recently enacted Wis. Stat. § 801.50(4m), "[n]ot more than 5 days after an action to challenge the apportionment of a congressional or state legislative district is filed, the clerk of courts for the county where the action is filed shall notify the clerk of the supreme court of the filing." Pursuant to Wis. Stat. § 751.035, the Wisconsin Supreme Court "shall appoint a panel consisting of 3 circuit court judges" to hear challenges to the apportionment of any Congressional or legislative district.

52. The 2011 Redistricting Plan has been challenged by the Involuntary Plaintiffs who claim that it is invalid on various constitutional and other legal grounds.

53. Plaintiffs contend that the 2011 Redistricting Plan is a valid, constitutional enactment of the Wisconsin State Legislature and further contend that Involuntary Plaintiffs' challenge to the 2011 Redistricting Plan is without merit.

54. Plaintiffs hereby challenge the constitutionality of the legislative districts established by the 2002 Court Plan and contend that those districts may not be used for any purposes, including the conduct of recall elections.

55. Pursuant to Wis. Stat. §§ 751.035 and 801.50(4m), within 5 days of the filing of this Complaint, the Clerk of this Court should notify the Clerk of the Supreme Court of same.

#### **CONCLUSION**

56. Plaintiffs respectfully request that the appointment a panel of three circuit judges to hear the matters raised herein pursuant to Wis. Stat. §§ 751.035 and 801.50(4m).

57. Plaintiffs respectfully request that an order be issued declaring the 2011 Redistricting Plan, as enacted by 2011 Wisconsin Acts 43 and 44, to be legally valid.

58. Plaintiffs respectfully request that an order be issued declaring that the legislative districts established by the 2002 Court Plan are unconstitutional.

59. Plaintiffs respectfully request that an order be issued enjoining the Government Accountability Board from taking any action related to the conduct of any recall election in the unconstitutionally malapportioned legislative districts established by the 2002 Court Plan.



Dated this 28<sup>th</sup> day of November, 2011.

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